IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.1051-SB of 2002

Date of decision: 4th May, 2011

Bhagwan Singh

… Appellant

Versus

State of Punjab

… Respondent

CORAM: HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Jasdeep Singh Gill, Advocate for the appellant.

Mr. J.S. Bhullar, Assistant Advocate General, Punjab for the State.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

Present appeal has been filed by Bhagwan Singh, who was nominated as an accused in a case FIR No.11 of 2001 registered at Police Station Khemkaran (Amritsar) under Section 376 IPC. He was tried by the Court of Additional Sessions Judge, Amritsar, which vide its judgment dated 5th April, 2002, held him guilty of an offence punishable under Section 376 IPC and vide a separate order of even date, sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/-, in default of payment of fine to further undergo rigorous imprisonment for three months.

Criminal proceedings were set into motion on a statement Ex.PA made by the prosecutrix (whose name has been withheld to protect her identity) widow of Puran Singh caste Mazhbi resident of village Lakhna, Police Station Valtoha, aged about 65-70 years. The prosecutrix stated that she was a resident of village Lakhna and was a housewife. Her husband had died about 7-8 years back. She had four sons; namely

Kashmir Singh aged about 36-37 years, Jagir Singh aged about 33-34 years, Kabul Singh aged about 30-31 years and Balbir Singh aged about 25-26 years. Except Balbir Singh, all the three sons were married. She also had a daughter namely Soma aged about 34-35 years, who was married in village Khemkaran. Parental village of the prosecutrix was Masatgarh. Her father namely Nathu had two brothers. Eldest brother of her father had died and the youngest one used to reside in Pakistan. Her paternal uncle's sons used to reside in village Masatgarh and were working as daily wagers. She had been dealing with them as real brothers. Both sides have been attending marriage functions of each other. Jagir Singh son of the prosecutrix was married in the month of Maghar. In order to give gifts to the sons of her uncle, the prosecutrix on 27th January, 2001 had gone to village Masatgarh. At about 10.00 a.m. she was going from village Lakhna to village Masatgarh on the path along the drain. At about 1.30 p.m. when she reached near the cremation ground of village Sankatra, she noticed a young man (whose name later-on she learnt as Bhagwan Singh son of Resham Singh of village Sankatra), coming from the opposite direction on foot. When he reached near the prosecutrix, he caught hold of her arms and dragged her into the bunker built on the drain. The prosecutrix resisted and fell down in the bunker. Bhagwan Singh broke open the string of her Salwar, took off his clothes and committed rape upon the prosecutrix. She raised a noise, which attracted Darshan Singh, who is a timber merchant, and Manjit Singh son of Kala Singh. They rescued the prosecutrix. At that time, the prosecutrix and Bhagwan Singh were in a naked condition. When Darshan Singh and Manjit Singh were talking to each other, the accused escaped from the spot. The prosecutrix along with Darshan Singh came to village Lakhna on a bicycle. After reaching there, she approached the Ex-Sarpanch Nirmal Singh and lodged a report with the police.

The above said FIR was investigated and a report under Section 173 Cr.P.C. was submitted against the appellant. The case was committed and was entrusted to the Court of Additional Sessions Judge, Amritsar. The appellant was charged for an offence punishable under Section 376 IPC. He pleaded not guilty and claimed trial.

Prosecutrix herself appeared as PW-1. She gave her age as 70 years and reiterated as to what was stated in her statement Ex.PA. In cross-examination, she admitted that Nirmal Singh, Ex-Sarpanch of her village had accompanied her and at the time of her deposition he was sitting outside the Court. She further admitted that Babbar, who had reached at the spot and had rescued her, was son of Kala Singh. The prosecutrix also admitted that Nirmal Singh and Kala Singh were friends. She further admitted that her son Kabul Singh was working as a labourer in the fields of Nirmal Singh. Besides this, the prosecutrix further stated that she had thumb marked a blank paper and her son Kabul Singh told her to go home after her medical examination was done and that they themselves would pursue the case.

Darshan Singh PW-2 stated that on the day of incident at about 1.30 p.m. he was going to village Sankatra on the defence drain. He heard the shrieks from the bunker built on the bank of defence drain. He reached there and saw the accused and prosecutrix in a naked condition. Prosecutrix was raising an alarm. He rescued her and took her to the house of Nirmal Singh Ex-Sarpanch. This witness, in cross-examination, admitted that Kala Singh Sarpanch was sitting outside the Court room on the day when this witness had deposed in the witness box. He further stated that village Lakhna and village Masatgarh are at a distance of about 3 kilometers.

Dr. Jaswant Singh PW-3 on 31st January, 2001 had medico legally examined the accused appellant Bhagwan Singh and had found

four abrasions on his thighs. He also opined that there was nothing to suggest that the appellant was incapable of performing sexual intercourse.

Dr.Amritpal Kaur PW-4 on 28th January, 2001 medico legally examined the prosecutrix, whose age was noticed as 65 years. Multiple minor abrasions were found on the nose of prosecutrix and one abrasion was found on her knee.

ASI Joginder Singh PW-5 stated that he had recorded statement Ex.PA of the prosecutrix, on the basis of which formal FIR Ex.PA/2 was registered. In cross-examination, he admitted that there was a land dispute pending between father of the accused and the Sarpanch of village Kalia Sankatra, as there was exchange of firing between the two parties. He further stated that Kala Singh was Sarpanch of village Kalia Sankatra and he had registered an FIR for firing against the father and brothers of the accused.

Retired Sub Inspector Narinder Singh PW-6 proved various other facets of the investigation.

Thereafter, prosecution closed its evidence and a statement of the accused appellant was recorded under Section 313 Cr.P.C. He denied all the incriminating circumstances put to him and pleaded false implication.

Resham Singh, father of accused Bhagwan Singh, appeared as DW-1 and stated that a case was registered against him under Section 336 IPC and Section 25/54/59 of the Arms Act, 1959 at the instance of Kala Singh Sarpanch of his village. He further stated that Nirmal Singh and Kala Singh had been attending courts together in the instant case tried against his son.

I have heard counsel for the parties.

Mr. Jasdeep Singh Gill, Advocate appearing on behalf of the appellant, has made a very forceful effort to persuade me to hold that it is

a case of false implication due to enmity. Learned counsel has stated that the appellant is a resident of village Kalia Sankatra and Kala Singh is Ex-Sapanch of the Village. Mr. Gill has referred to the testimony of the prosecutrix PW-1, Darshan Singh PW-2 and SI Joginder Singh PW-5 and has submitted that as Resham Singh DW-1-father of the appellant, stated a continuous land dispute was going on between Kala Singh Sarpanch and family members of the accused. It is submitted that a case for firing of shots was also registered against family members of the present appellant and he had issued telegrams against the conduct of police officials to various authorities. Mr.Gill wants this Court to believe that since Kala Singh, with whom family of the appellant had inimical relations, was a friend of Nirmal Singh, Nirmal Singh has used the prosecutrix, who is mother of a labourer Kabul Singh employed by him, for involving the appellant in a false case. The argument of defence espoused with all vehemence is too far fetched. This Court cannot become oblivious of the fact that the prosecutrix, a mother of three married sons, having daughters-in-law and also a married daughter, was an aged lady and it will be too difficult for her to falsely implicate the appellant and thereby to suffer ignominy among her family members. On the touchstone of probabilities, it seems that when the appellant was caught committing offence of rape by force, all those persons who were inimical to him may have joined hands together to ensure that the appellant is not able to go scot-free and is taken to task for the offence committed by him.

Another fringe argument raised before me is that once the appellant was caught in the bunker committing the offence of rape it is difficult for him in the presence of two persons, i.e. Darshan Singh PW-2 and Babbar son of Kala Singh, who is inimical to the appellant, to escape from the spot. It cannot be ruled out that the first reaction of the witnesses is to give solace to the old lady, who must be wailing or crying at the

relevant time. Therefore, there was a sufficient opportunity for the appellant to escape.

Taking totality of the circumstances into consideration, I do not find any merit in the arguments advanced before me. Therefore, there is no other option except to uphold the conviction and maintain the sentence awarded to the appellant by the trial Court.

Hence, the present appeal is hereby dismissed.

[KANWALJIT SINGH AHLUWALIA]
JUDGE

May 4, 2011
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